

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 21-cr-10104-PBS
	)	
VLADISLAV KLYUSHIN	)	
Defendant	)	
_____	)	

**COMMENTS TO JURY INSTRUCTIONS**

Renewing all his prior charge requests and objections, and reserving for tomorrow's charge conference further oral remarks, Vlad Klyushin offers these comments on the Court's Feb. 3 Draft Jury Instructions.

**DRAFT INST. 16 – COUNT ONE: CONSPIRACY**

There's a typo at the top of page three of the instruction, as the government notes.

Page four, first full paragraph, first sentence: strike "alleged in the conspiracy."

**DRAFT INST. 19 – COUNT TWO: WIRE FRAUD**

Page two, second full paragraph, second sentence: change "defraud *or* obtain money or property" to "defraud *and* obtain money or property." *See Cleveland v. U.S.*, 531 U.S. 12, 15, 18-19, 25-26 (2001) (holding that the object of a criminal fraud scheme must be obtaining property in the hands of the victim, stressing that the criminal fraud laws "protect[] property rights only" and clarifying that the statutes' "scheme to defraud" and "obtaining money or property by false or fraudulent pretenses" clauses are coterminous).

**DRAFT INST. 25 – SECURITIES FRAUD – SECOND ELEMENT: FRAUDULENT  
CONDUCT**

In the sentence straddling pages one and two, insert the phrase “you find to be a coconspirator” between the words “another” and “misrepresenting.” Insert following that sentence: “But merely exploiting a weakness in an electronic code to gain unauthorized access is not ‘deceptive’ and doesn’t amount to securities fraud.” *SEC v. Dorozkho*, 574 F.3d 42, 51 (CA2 2009).

Page two, last paragraph: Strike sentence two as irrelevant and extraneous to the (invalid) theory of securities fraud urged in *Dorozkho*, *U.S. v. Khalupsky*, 5 F.4th 79 (CA2 2021) and this case.

Page three, paragraph one: Strike on the same grounds.

**DRAFT INST. 28 – VENUE**

Sentence One should read: “Article III and the Sixth Amendment of the Constitution, along with Federal Criminal Procedure Rule 18, require ...”

Insert in text after n.14: “To determine whether a meaningful connection exists, you must consider the nature of the crime alleged and the act or acts – the essential conduct elements – constituting it.” *U.S. v. Auernheimer*, 748 F.3d 525, 532-33 (CA3 2014); *U.S. v. Rodriguez-Moreno*, 526 U.S. 275, 279, 280 & n.4 (1999); *U.S. v. Cabrales*, 524 U.S. 1, 6-7 (1998); *U.S. v. Anderson*, 328 U.S. 699, 703 (1946); *U.S. v. Bowens*, 224 F.3d 302, 310 (CA4 2000).

For preservation purposes, we object to the instruction that “the government only has to prove [venue] by a preponderance of the evidence” and contend the reasonable doubt standard properly applies. *Cf. U.S. v. Royer*, 549 F.3d 886, 893 n.7 (CA2 2008); Brief for Petitioner in *Timothy J. Smith v. U.S.*, No. 21-1576, at 33-34 & n.11 (S. Ct. Jan. 27, 2023) and cases cited.

Insert in an appropriate spot: “Venue is proper in a district where the defendant intentionally or knowingly causes an act in furtherance of the charged offense to occur or it is foreseeable that such an act would occur.” *U.S. v. Svoboda*, 347 F.3d 471, 483 (CA2 2003).

Respectfully Submitted,  
Vladislav Klyushin,  
By His Attorney,

**/s/ Maksim Nemtsev**  
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Dated: February 7, 2023

**CERTIFICATE OF SERVICE**

I, Maksim Nemtsev, hereby certify that on this date, February 7, 2023, a copy of the foregoing documents has been served via Electronic Court Filing system on all registered participants.

**/s/ Maksim Nemtsev**  
Maksim Nemtsev, Esq.